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Executive Director

ANDREW B. FREMIER  
Deputy Executive Director

**March 17, 2015**

**Addendum No. 3  
to  
Request for Proposal (RFP)  
Cash Counting and Armored Car Services for Toll Bridges  
in the San Francisco Bay Area  
dated February 6, 2015**

Dear Proposer:

This letter is Addendum No. 3 to the RFP for Cash Counting and Armored Car Services for Toll Bridges in the San Francisco Bay Area dated February 6, 2015 as amended by Addendum No. 1 dated March 4, 2015 and Addendum No. 2 dated March 11, 2015. Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. This addendum includes the following attachments:

<u>Addendum Item</u>	<u>RFP Reference</u>	<u>Change</u>
1.	Appendix F, <u>Sample CSV File</u> , Page 48	Appendix F, Sample csv File is deleted in its entirety and replaced with the attached Revised Appendix F, Sample csv file

The remaining provisions of the RFP remain unchanged. In the event of a conflict between this Addendum and the previous version(s) or any announcements regarding this Addendum, this Addendum takes precedence.

Questions and answers regarding the RFP are enclosed with this Addendum, as well as BATA's responses to Proposers' requests to modify the standard contract.

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Any questions concerning this Addendum to the RFP should be directed to BATA Project Manager, Russell Yuen at 510-817-5961, or via email at [ryuen@mtc.ca.gov](mailto:ryuen@mtc.ca.gov).

Sincerely,

DocuSigned by:

*Andrew B. Fremier*

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Andrew B. Fremier

Deputy Executive Director

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RFP Cash Counting and Armored Car Services  
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APPENDIX F  
REVISED SAMPLE CSV FILE

## Revised Appendix F - Sample csv File

Bridge	Collector	Currency/C Business Bag #s	2/8/2015		Processing		2/11/2015		100	Currency	Coin	Cash	Declared	Received	Variance
	2 2###	1238	20	0	2	0	5	0	1	230	0	230	230	230	0
	2 2###	1347-1380	8	0	10	1	15	1	0	418	7	425	425	425	0
	2 2###	1237-1357	15	0	12	1	7	0	2	425	0	425	425	425	0
	2 2###	1274-1360	4	0	43	3	48	0	1	1309	11	1320	1320	1320	0
	2		48	2	72	15	95	51	104	2382	18	2400			0
	3 3###	2040	15	0	26	4	28	0	1	845	0	845	845	845	0
	3 3###	930-966	51	0	224	41	167	0	14	6321	34.05	6355.05	6354.87	6355.05	0.18
	3 3###	2155	0	0	41	0	7	0	1	445	0	445	445	445	0
	3 3###	1038-1089	3	0	189	2	130	0	4	3968	37.16	4005.16	4005.06	4005.16	0.1
	3		69	0	480	47	332	0	20	11579	71.21	11650.21			0.28
			117	2	552	62	427	51	124	13961	89.21	14050.21			0.28

ADDENDUM NO. 3 DATED MARCH 17, 2015  
QUESTIONS AND ANSWERS  
CASH COUNTING AND ARMORED CAR SERVICES FOR SAN FRANCISCO BAY AREA TOLL  
BRIDGES RFP DATED FEBRUARY 6, 2015

**Q1) Is cash tracked by each toll both or bridge?**

A1) Each bridge and toll collector has an assigned number which tracks the cash collected.

**Q2) What are the expectations for cash collection over the term of this contract (cash vs. electronic toll ratio)?**

A2) Currently the cash to electronic toll ratio is approximately 70% cash to 30% electronic toll revenue. There are no estimates on how this will change over the term of the contract.

**Q3) Is BATA's goal to eventually switch to all electronic toll collections for the seven Bay Area bridges?**

A3) There are no plans to switch to all electronic toll collections in the near future.

**Q4) What is meant by other valuables picked up?**

A4) Other valuables include Electronic Toll Collection tags, and checks

**Q5) Who holds the key to the sergeant bags used to transport the cash (bank or BATA)?**

A5) A key for the sergeant bags will be located at the bank, bridge, and at BATA's office.

**Q6) Is the key to the sergeant bags universal to each bag?**

A6) Each bridge has its own key for the sergeant bags at their location.

**Q7) Are there separate bags for cash and coin?**

A7) Yes.

**Q8) Is there a maximum weight per bag?**

A8) No.

**Q9) Can BATA provide Proposers with a sample of Appendix F with data included?**

A9) Yes, please see the attached revised Appendix F.

**Q10) What is the intention of the minimum requirement of requiring a Proposer to have experience servicing two government agencies with daily transactions of at least \$700,000?**

A10) BATA wants to ensure that the bank awarded this contract has provided similar services, on a similar scale to government agencies.

**Q11) When preparing a cost proposal which number in regards to the daily collection totals should proposers use?**

A11) Please see Page 9 of the RFP, item G. Cost Proposal which states:

*Please itemize all costs by task listed in Appendix A, Scope of Work with fees estimated on a week-day average of \$620,000 daily, a week-end average of \$750,000 daily and 332 collector bags.*

**Q12) What is the difference between BATA's use of shall and must in the minimum qualifications section of the RFP?**

A12) For purposes of this RFP, the use of shall and must means that in order to be found responsive, a proposer must demonstrate the listed qualifications.

**Q13) Will BATA consider having a separate contract with an armored car service?**

A13) BATA would prefer to avoid having a separate contract, but would consider having a separate contract if necessary.

**Q14) Can vault services be subcontracted?**

A14) Yes, however, BATA would prefer that vault services not be subcontracted.

**Q15) Will the armored car service be considered the bank's subcontractor, or will BATA have a separate contract?**

A15) Both of these options will be considered.

**Q16) Are there established procedures on how to handle counterfeit bills?**

A16) Please see page 16 of the RFP, Appendix A, Scope of Work, bullet point 7, which states:

*Follow standard banking procedures for informing the United States Department of the Treasury of counterfeit notes and follow up if necessary. The Bank shall also provide notice to BATA via email a copy of the any counterfeit bills within one (1) business day of deposit credit date. The notice will identify the bridge plaza, collector number, bag number, and collection date.*

**Q17) Will the armored car service provider be required to deliver and pick up inter-office mail?**

A17) Yes.

**Q18) Will BATA sign a bank contract for these services?**

A18) BATA would prefer to avoid having a separate contract, but would consider having a separate contract if necessary, provided that BATA's contract form would control in the event of any inconsistencies.

**Q19) What is the deposit volume for the accounting office?**

A19) There is no deposit volume for the BATA accounting office.

**Q20) What are the change order request volumes by location?**

A20) The change order requests vary; average change order requests are below:

SFOBB <\$30K, Antioch <\$5K, Richmond <\$10K, San Mateo < \$11K, Dumbarton <\$7K,  
Carquinez <\$18K, Benicia <\$18K

**Q22) Can BATA confirm that the contract with the Armored Carrier will be signed directly by BATA and the Carrier but the servicing follow up or issues would be coordinated directly with the Bank provider?**

A22) The contract with the armored carrier can be signed directly with BATA. Servicing, follow up, or issues should be coordinated directly with the Bank provider.

**Q23) Can BATA describe the Coin deposit process in more detail so Proposers can understand if Coins are counted and the deposit slip is representative of an actual count by BATA or is it sent to the bank subject to count?**

A23) The coins collected are counted by BATA and sent to the bank for a recount, same as currency.

**Q24) Are there any special equipment needs required by the carrier and vault for lifting or handling the bags due to size and weight?**

A24) Special equipment may include a hand truck.

**Q25) Can each of the 8 addresses for pickup and delivery by the carrier be provided so we can work with multiple carriers on a competitive bid?**

A25) For security purposes, we cannot give the addresses for pickup and delivery of cash until the contract is executed.

**Q26) If the contract is separate for the carrier how is the Bank to handle billing? How does BATA expect to be billed and pay for the contract with the carrier?**

A26) The carrier can send the transportation billing to the Bank and the Bank can include the transportation portion of the billing as part of the overall billing.

**Q27) Would BATA be willing to have two (2) sergeant bags per bridge, one with the currency and one with coin so we can direct coin to our coin processor?**

A27) No.

**Q28) It is our preference to make each Sergeant Bag one master total deposit and the report back would include each collector bag itemization. That reduces the cost based on the number of deposits and meets the per collector reporting requirement. Is this acceptable?**

A28) BATA requires that collection from each bridge (daily) one master total deposit, not each sergeant bag.

**Q29) Can BATA accept our collector bag detail report and load that into their system for variances? The report provided would show what was declared and what was verified. This would remove the need for BATA to transmit a file to us.**

A29) No.

**Q30) In the RFP there is a request for a 24 hour requirement of counterfeit items, is a requirement of 48 hours acceptable?**

A30) 48 hours would be acceptable.

**Q31) Page 17 of the RFP, bullet point two states:**

*Provide bank deposit bags for collected cash.*

**Which type of bags are those? Does the Bank provide those bags and what is the average amount of those per month?**

A31) The bags referenced in this section are bank bags for cash deposits that are to be sealed and locked, which are provided by the bank. BATA recycles the bags, so Bank only needs to provide enough bags at the beginning. Twelve sets of bags will suffice.

**Q32) For change orders other than fax request can the request be via our online portal, CEO or a phone order instead of a fax request?**

A32) Fax requests would be a good option to have available, but we would consider other methods.

**Q33) Will BATA consider using a bank-standard process for reconciling cash, rather than the current process using the BATA supplied csv file?**

A33) No, the file is needed to upload back to our ATCAS II system.

**Q34) Can BATA describe how bulk coin is packaged by each collector?**

A34) Bulk coin is collected in a sergeant's bag.

**Q35) Please clarify the type, number and value of items to be transported between bridges and the BATA offices, and the schedule for doing so?**

A35) Items that will be transported between bridges and BATA offices include but are not limited to, money, count slips, and receipts, shift schedules, ticket counts, lane assignment sheet; daily record of cash bags; incident report, miscellaneous deposit slip; required for change fund replenishment. The value of these items vary, and a schedule will be developed with the successful proposer.

**Q36) Can BATA please confirm that Appendix B is intentionally not included in this RFP?**

A36) Appendix B is intentionally not included in this RFP.

**Q37) Can BATA please confirm that Attachment F is intentionally not included in this RFP?**

A37) Attachment F is intentionally not included in this RFP.

**Q38) Can BATA please clarify what is meant for a pre-award audit in the cost proposal section of the RFP?**

A38) The pre-award audit does not apply to this contract as there are no federal funds included.



**Q39) Is there a specific format Proposers are required to use for the cost proposal?**

A39) No.

**Q40) Are proposers required to send one sealed envelope including their financial statements, or one envelope per copy of their proposal submitted?**

A40) Proposers can submit one copy of their financial statements in a sealed envelope.

**Q41) Can the title of the contract “Professional Services Agreement” be changed to “Banking Services Agreement”**

A41) No but “Agreement” is acceptable.

**Q42) Can BATA not require the Bank’s insurance program provide coverage for subconsultants and subcontractors. To the extent that the Bank uses a subcontractor, the subcontractor will be required to meet or exceed the insurance requirements**

A42) Please see Attachment E, Insurance and Financial Security (Bond) Provisions, of Appendix D, BATA Standard Professional Services Agreement, item 1.A, paragraph 2 which states:

*BANK is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, BANK shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling BANK’s indemnity obligation as to itself or any of its Agents in the absence of coverage.*

**Q43) Can BATA not require that the Bank tailors endorsements for specific contracts. The Bank’s policies have an omnibus additional insured endorsement which recognizes business associates as additional insured’s so long as a contractual requirement to do so exists?**

A43) BATA accepts blanket additional insured endorsements for this requirement.

**Q44) Can BATA allow property insurance coverage for the Bank to be all risk and includes earthquake coverage**

A44) BATA allows property insurance coverage for the Bank to be all risk and include earthquake coverage, but incremental cost of earthquake coverage shall not be passed through BATA.

**Q45) Bank requests that BATA does not require that the Bank’s insurers be subject to the approval of a business associate since the Bank’s insurers play an integral part in the Bank’s overall risk financing program.**

A45) BATA needs more information to answer this question.

**Q46) Can BATA remove the requirement that Bank’s wholly owned captive insurance companies be rated by A.M. Best.?**

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A46) The requirement in Attachment E, Insurance and Financial Security (Bond) Provisions, of Appendix D, BATA Standard Professional Services Agreement is that policies be issued by insurers acceptable to BATA. BATA may approve a wholly-owned captive insurance company that does not have a best rating.

ADDENDUM NO. 3 DATED MARCH 17, 2015  
RESPONSES TO REQUEST FOR EXCEPTIONS  
CASH COUNTING AND ARMORED CAR SERVICES FOR SAN FRANCISCO BAY AREA TOLL BRIDGES RFP DATED FEBRUARY 6,  
2015  
(Requests for deletions formatted in strikethrough, Requests for additional language formatted in **bold**)

RFP Reference	Request	Response
RFP, Attachment D – Professional Services Agreement, Page 19, Article 1 – Scope of Services	<p>Revise paragraph two of Article 1 to reflect the bold text below:</p> <p>BANK’s point of contact and the individual authorized to communicate to BATA on behalf of BANK is <b>INSERT NAME OF BANK’S PM</b> (“BANK Project Manager”). A change in the BANK Project Manager requires BATA written approval, <b>which shall not be unreasonably withheld. Nothing contained herein shall interfere with BANK’s ability to terminate any BANK employee providing services under this Agreement, or otherwise accept the resignation of any such BANK employee. The person that the BANK designates as a replacement for any BANK Project Manager or any Key Personnel (as defined in Section 4, below) shall, however, be subject to BATA’s reasonable review and approval.</b></p>	BATA does not agree to this change, however BATA is willing to clarify, upon request by the winning Bank, that approval would be over the assigned Bank Project Manager, not the removal by Bank of the incumbent Project Manager.
RFP, Attachment D – Professional Services Agreement, Page 20, Article 2 – Period of Performance	<p>Please revise Article 2, Period of Performance to reflect the text below:</p> <p>BANK’s services hereunder shall commence on or after July 1, 2015, and shall be completed no later than June 30, 2020, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. <del>BANK’s services shall be performed in accordance with the schedule included in Attachment B, <u>Project Schedule</u>, attached hereto and incorporated herein by this reference.</del></p>	BATA is willing to accept this change upon request from awarded Bank.
RFP, Attachment D – Professional Services Agreement, Page 20, Article 4 – Key Personnel	<p>Please revise Article 4, Key Personnel to reflect the text below:</p> <p>The key personnel to be assigned to this work by BANK <del>and, if applicable, their hourly rates and the estimated hours to be supplied by each</del> are set forth in Attachment D, <u>Key Personnel</u>, attached hereto and incorporated herein by this reference. <b>Subject to Section 1, substitution</b> <del>Substitution</del> of any of the personnel named in Attachment D, <u>Key Personnel</u> <del>or a decrease in the hours provided to the project by such personnel of more than 10%</del> requires the prior written approval of the Project Manager or a designee. <del>BANK shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15.</del></p>	BATA does not agree to this change.

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	BANK agrees that all personnel assigned to this work will be <del>professionally</del> qualified for the assignment to be undertaken. BATA reserves the right to direct removal of any <b>Key Personnel, including the Bank Project Manager, individual, including key personnel,</b> assigned to this work.	
RFP, Attachment D – Professional Services Agreement, Page 21, Article 6 – Termination,	Can BATA add mutual termination to the contract	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 21, Article 6 – Termination, Subarticle A	<p>Please revise Article 6, Termination, subarticle A to reflect the text below:</p> <p><b>A. Termination for Convenience.</b> BATA may terminate this Agreement for convenience, in whole or in part, at any time by 30 day written notice to BANK. Upon receipt of notice of termination, BANK shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BATA. BANK shall be reimbursed for <b>all services performed prior to the effective date of such termination, and at the rates specified in Attachment C</b> <del>costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed 1%, plus reasonable termination costs, not to exceed the amount payable for such deliverables.</del> If BANK has any property in its possession belonging to BATA, BANK will account for the same, and dispose of it in the manner BATA directs. Except as provided above, BATA shall not in any manner be liable for BANK's actual or projected lost profits had BANK completed the services required by this Agreement.</p>	BATA is willing to accept this change upon request from awarded Bank.
RFP, Attachment D – Professional Services Agreement, Page 21, Article 6 – Termination, Subarticle B	<p>Please revise Article 6, Termination, subarticle B to reflect the text below:</p> <p><del><b>B. Termination for Default.</b></del> If BANK does not <del>deliver the work products specified in this Agreement in accordance with the delivery schedule</del> <b>perform the services required in this Agreement</b> or fails to perform in the manner called for in the Agreement, or if BANK fails to comply with any other material provision of the Agreement, BATA may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on BANK, setting forth the manner in which BANK is in default. If BANK does not cure the breach or describe to BATA's satisfaction a plan for curing the breach within the fifteen (15) day period, BATA may terminate the Agreement for default. In the event of such termination for default, BANK will be entitled to be reimbursed only for work performed in full compliance with the contract requirements. <del>as follows: BANK shall be</del></p>	BATA is willing to accept this change upon request from awarded Bank.

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	<p><del>reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. Such reimbursement will be offset by any costs incurred by BATA to complete work required under the Agreement.</del> In no event shall BATA be required to reimburse BANK for any costs incurred for work causing or contributing to the default. If BANK has any property in its possession belonging to BATA, BANK will account for the same, and dispose of it in the manner BATA directs. BATA shall not in any manner be liable for the BANK's actual or projected lost profits had the BANK completed the services required by this Agreement.</p>	
RFP, Attachment D – Professional Services Agreement, Page 22, Article 6 – Termination, Subarticle C	<p>Please revise Article 6, Termination, subarticle C to reflect the text below:</p> <p><b>C.</b> <del>If it is determined by BATA that</del> BANK's failure to perform resulted from unforeseeable causes beyond the control of BANK, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of BANK, BATA, <del>after setting up a new delivery or performance schedule,</del> may allow BANK to continue work, or treat the termination as a termination for convenience.</p>	<p>BATA does not agree to the strikeout of "it is determined by BATA that".</p> <p>If requested by the awarded bank, BATA is willing to accept the strikeout of "after setting up a new delivery or performance schedule".</p>
RFP, Attachment D – Professional Services Agreement, Page 22, Article 9 – Indemnification, Paragraph 1	<p>Please revise Article 9, Indemnification to reflect the text below:</p> <p>To the maximum extent permitted by law, <b>and subject to the limitations set forth below,</b> BANK shall indemnify, keep and hold harmless BATA and those entities (if any) identified as additional insureds in Attachment E, <u>Insurance and Financial Security (Bond) Provisions</u>, and their commissioners, directors, officers, agents, and employees ("BATA Indemnified Parties") against any and all demands, claims, suits or actions arising out of any of the following, <b>inclusive of all court costs, and reasonable attorney's fees related to the defense of the following</b>, <u>"Indemnified Claims"</u>:-</p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 23, Article 9 – Indemnification, subarticle A	<p>Please revise Article 9, Indemnification, subarticle A to reflect the text below:</p> <p><b>A.</b> Any injury or death to persons or property or pecuniary, financial or economic losses <del>that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by BANK</del> <b>to the extent</b> caused by any breach of the Agreement or negligent act or omission or willful misconduct of the BANK or its officers, employees, subconsultants or agents; or</p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page	<p>Please revise Article 9, Indemnification, subarticle to reflect the text below:</p> <p><b>B.</b> <del>Any allegation</del> <b>Claims asserted by a third party</b> that materials, services, or technology</p>	BATA does not agree to this change.

23, Article 9 – Indemnification, subarticle B	<p>provided by <b>to BATA by</b> BANK under this Agreement (“<b>Technology</b>”) <del>infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any</del> <b>such</b> third party <b>which is used by BATA in the manner permitted under this Agreement and any instructions provided by Contractor or its agents related to such usage (“Approved Use”), and the third party claim asserts that such Approved Use of the Technology infringes on such third party’s patent, copyright, trademark, service mark or trade secret (collectively, “Infringement Claims”); provided that BANK shall have no obligation to indemnify and hold harmless BATA for any Infringement Claim: (i) in the event that BATA agrees to settle such Infringement Claim without the prior written consent of BANK ; (ii) to the extent the alleged infringement is premised on: (a) any customization, integration, enhancement, modification or add-on that is made to or used with the Technology at BATA ’s request or provided by a party other than BANK ; (b) use of the Technology other than in accordance with the terms of this Agreement or the documentation that is provided to BATA that relates to the Technology; (c) use of a version of the Technology no longer supported by BANK , or (d) use of the Technology in combination with any hardware, software or other materials and/or services not supplied by BANK where, absent such combination, the Technology would not be infringing.</b></p> <p>BANK further agrees to defend any and all <del>such claims, actions, suits or other legal proceedings and</del> <b>Indemnified Claims</b> and pay all <b>reasonable</b> charges of attorneys and all other <b>reasonable</b> costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the BATA Indemnified Parties, <b>upon any Indemnified Claim,</b> BANK shall, at its expense, satisfy and discharge the same.</p>	
RFP, Attachment D – Professional Services Agreement, Page 23, Article 9 – Indemnification	<p>Please add the following two paragraphs to Article 9, Indemnification:</p> <p><b>BANK’s liability for Infringement Claims, in the aggregate, shall not exceed the average annual fees paid or payable by BATA under this Agreement and BANK’s liability for Indemnified Claims, other than Infringement Claims, shall not exceed two times the average annual fees paid or payable BATA under this Agreement.</b></p> <p><b>FURTHER, NOTWITHSTANDING THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THEORY OF RECOVERY, EVEN</b></p>	BATA does not agree to this change.

	<b>IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR THE SAME ARE REASONABLY FORESEEABLE.</b>	
RFP, Attachment D – Professional Services Agreement, Page 23, Article 10 DATA to be Furnished by BATA	All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“BATA Data”) made available to BANK by BATA, <b>if any,</b> for use by BANK in the performance of its services under this Agreement shall remain the property of BATA and shall be returned to BATA at the completion or termination of this Agreement. No license to such BATA Data, outside of the Scope of Work of the Project, is conferred or implied by BANK’s use or possession of such BATA Data. Any updates, revisions, additions or enhancements to such BATA Data made by BANK in the context of the Project shall be the property of BATA and subject to the provisions of Article 11.	BATA is willing to accept this change upon request from awarded Bank.
RFP, Attachment D – Professional Services Agreement, Page 23, Article 11 Ownership of Work Products	Delete article 11 – Ownership of work products	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 24, Article 12 Subcontracts	Delete reference to Ownership of Work Products in subarticle A	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 24, Article 12 Subcontracts, subarticle B	Please revise Article 12, subcontracts, subarticle B to reflect the text below:  B. Nothing contained in this Agreement or otherwise shall create any contractual relationship between BATA and any subcontractors, and no subcontract shall relieve BANK of his/her responsibilities and obligations hereunder. BANK agrees to be as fully responsible to BATA for the acts and omissions of its subcontractors and of <b><u>its Third Party Service Providers (as defined in paragraph E., below)</u></b> persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by BANK. BANK's obligation to pay its subcontractors <b><u>and its Third Party Service Providers</u></b> is an independent obligation from BATA's obligation to make payments to BANK.	BATA does not agree to this change.
RFP, Attachment D – Professional Services	Please add the following as subarticle E to Article 12 subcontracts:	BATA does not agree to this change.

<p>Agreement, Page 24, Article 12 Subcontracts</p>	<p><b>E. For purposes of this Agreement, all references to “subcontractors,” “subcontracts,” “subconsultants,” or “subconsulting agreements,” shall refer to a third party or an agreement with such third party, if any and as applicable, engaged by BANK to specifically aid in the performance of its obligations under this Agreement, but shall not include any third party engaged by BANK, from time to time, in the performance of certain operational, technological, incidental, or back office functions that assist BANK in its performance of services, on a common basis, for all or most of its customers utilizing such services, inclusive of cash-counting and vault services, such latter category of third parties being referred to as “Third Party Service Providers.” BANK will obtain prior consent to its use of any “subcontractors” in the performance of services, to the extent and in the manner required under this Agreement, but shall not be required to notify or obtain written consent from Comptroller or any other party to its engagement of Third Party Service Providers.</b></p>	
<p>RFP, Attachment D – Professional Services Agreement, Page 25, Article 13 – Assignment of Agreement</p>	<p>Please revise Article 13, Assignment of Agreement to reflect the text below to reflect the text below:</p> <p style="padding-left: 40px;">BANK shall not assign this Agreement, or any part thereof without prior express written consent of the Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable; <b>provided, however, that BANK may assign this Agreement without the prior written consent of the Comptroller to a successor in interest in connection with a merger, reorganization, consolidation, or a disposition of a particular business to which this Agreement relates, and may assign this Agreement to an affiliate or subsidiary. In the event of an assignment, BANK shall notify BATA and BATA shall have the right to immediately terminate this Agreement.</b></p>	<p>BATA does not agree to this change.</p>
<p>RFP, Attachment D – Professional Services Agreement, Page 25, Article 14 Records</p>	<p>Please revise Article 14, Records to reflect the text below to reflect the text below:</p> <p style="padding-left: 40px;">BANK agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable <del>project costs</del> <b>fees</b>. BANK further agrees to keep all <del>records</del> <b>“Records” (as defined and subject to the limitations of Article 15)</b> pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer, <b>but in no event longer than seven (7) years from the date of creation of such record. No transaction records, such as deposit images, debit or credit entries,</b></p>	<p>If requested by the awarded bank, BATA is willing to accept the strikeout of “project cost” and replacing with “fees”.</p> <p>BATA does not agree to any additional changes in this section. .</p>



	<b>and the like shall be required to be retained for periods in excess of BANK's standard retention periods for such transaction records, which periods equal or exceed retention periods required by law binding upon BANK.</b>	
RFP, Attachment D – Professional Services Agreement, Page 25, Article 15 Audits, paragraph 1	<p>Please revise the text of Article 15, Audits to reflect the text below:</p> <p style="padding-left: 40px;">BANK shall permit BATA, and its authorized representatives to have access to BANK's books, records, <del>accounts</del>, and any and all <del>work products, materials, and other</del> data <b>directly related to BATA's accounts and/or the services BANK provides for BATA under relevant to</b> this Agreement (collectively "Records"), for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. <b>Subject to the retention requirements and limitations of Article 14</b> BANK shall in no event dispose of, destroy, alter, or mutilate said books, records, <del>accounts, work products, materials</del> and data for that period of time. <b>Notwithstanding anything to the contrary in this Agreement, BANK shall not be obligated to produce any regulatory examination reports or any other reports or filings that it is prohibited by law from disclosing to third parties.</b></p>	<p>BATA does not agree to the following modifications:</p> <p>BANK shall permit BATA, and its authorized representatives to have access to BANK's books, records, <del>accounts</del>, and any and all <del>work products, materials, and other</del> data <b>directly related to BATA's accounts and/or the services BANK provides for BATA under relevant to</b> this Agreement (collectively "Records"), for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. <b>Subject to the retention requirements and limitations of Article 14</b> BANK shall in no event dispose of, destroy, alter, or mutilate said books, records, <del>accounts, work products, materials</del>.</p> <p>Upon request from the awarded Bank, BATA is willing to add the following to the end of Article 15, Audits:</p> <p>"provided that Bank shall not be obligated to produce any reports or filings that it is prohibited by law from disclosing to third parties."</p>
RFP, Attachment D – Professional Services Agreement, Page 26, Article 17, Solicitation of Contract	<p>Please revise Article 17, Solicitation of Contract to reflect the text below:</p> <p style="padding-left: 40px;">BANK warrants, <b>based upon the undersigned's due inquiry of those employees and agents of BANK he/she deems appropriate under the circumstances</b>, that it has not employed or retained any company or persons, other than a bona fide employee working solely for BANK, to solicit or secure this Agreement, and that it has not paid or agreed to pay any</p>	BATA does not agree to this change.

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	company or person other than bona fide employees working solely for BANK, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, BATA shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from BANK's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.	
RFP, Attachment D – Professional Services Agreement, Page 26, Article 18, Prohibited interest, paragraph 1	<p>Please revise Article 18, Solicitation of Contract, paragraph 1 to reflect the text below:</p> <p style="text-align: center;"><b>BANK covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the materially interfere with BANK's ability to impartially provide the services required under this Agreement, impartial rendering of assistance or advice to BATA. BANK further covenants that in the performance of the Agreement no person known to the BANK has having a conflict of interest that would materially interfere with the BANK's ability to provide the services required under this Agreement having any such interest shall be employed as Key Personnel under this Agreement.</b></p>	BATA does not agree to this change.
Attachment D – Professional Services Agreement, Page 26, Article 18, Prohibited interest, paragraph 2	<p>Please revise Article 18, Solicitation of Contract, paragraph 1 to reflect the text below:</p> <p style="text-align: center;">No member, officer, employee or agent of BATA, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, et seq. and 87100 et seq., direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. <del>Accordingly, BANK further covenants that it has made a complete disclosure to BATA of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of BATA (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by BATA.</del></p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 26, Article 18.1, Organizational Conflicts of	<p>Please revise Article 18, Solicitation of Contract, paragraph 1 to reflect the text below:</p> <p style="text-align: center;">BANK shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts,</p>	BATA does not agree to this change.

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Interest, Paragraph 1	a firm or person is <del>actually unable, or potentially unable,</del> to <b>perform the contracted services in a commercially reasonable manner.</b> <del>render impartial assistance or advice to BATA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.</del>	
RFP, Attachment D – Professional Services Agreement, Page 27, Article 18.1, Organizational Conflicts of Interest, Paragraph 3	<p>Please revise Article 18, Solicitation of Contract, paragraph 3 to reflect the text below:</p> <p>If at any time during the term of this Agreement BANK becomes aware of an organizational conflict of interest in connection with the work performed hereunder, BANK shall <del>immediately</del> <b>promptly</b> provide BATA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. BANK's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, BATA becomes aware of an organizational conflict of interest in connection with BANK's performance of the work hereunder, BATA shall similarly notify BANK. In the event a conflict is presented, whether disclosed by BANK or discovered by BATA, BATA will consider the conflict presented and any alternatives proposed and meet with BANK to determine an appropriate course of action. BATA's determination as to the manner in which to address the conflict shall be final <b><u>and may include termination of this Agreement.</u></b></p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 27, Article 18.1, Organizational Conflicts of Interest, Paragraph 4	Please delete paragraph 4	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 27, Article 19, Laws and Regulations	<p>Please revise Article 19, Laws and Regulations to reflect the text below:</p> <p>BANK shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to BATA, that <b><u>are binding upon BANK in the performance of services under this Agreement.</u></b> <del>relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on BATA as a recipient of federal or state funds are hereby in turn imposed on BANK.</del></p>	BATA does not agree to this change.

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RFP, Attachment D – Professional Services Agreement, Page 28, Article 22, Temporary Suspension of work, Paragraph 2	<p>Please revise Article 22, Temporary Suspension of Work, paragraph 2 to reflect the text below:</p> <p style="text-align: center;">If the suspension is due to BANK’s failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the BANK <b>that is not otherwise permitted under the Agreement or taken at the express instruction of BATA or otherwise the result of circumstances beyond BANK’s reasonable control</b>, all costs shall be at BANK’s expense, <b>subject to the limitations of Article 9</b>, and no schedule extensions will be provided by BATA.</p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 29, Article 23 Warranty of Services	Bank requests that BATA change the name of this article to Standard of Care for Services.	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 29, Article 23 Warranty of Services, subarticle A	<p>Please revise Article 23, Warranty of Services, subarticle A to reflect the text below:</p> <p>A. In the performance of its services, BANK <del>covenants that it represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of BANKS with special expertise</del> <b>commercially reasonable care</b> in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. In addition, BANK shall provide such specific warranties as may be set forth in specific Task Orders as agreed upon by the parties.</p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 29, Article 23 Warranty of Services, subarticle B	<p>Please revise Article 23, Warranty of Services, subarticle B to reflect the text below:</p> <p>In the event that any services provided by BANK hereunder are deficient because of BANK’s or subconsultants failure to perform said services in accordance with the <del>warranty</del> standards set forth above, BATA shall report such deficiencies in writing to the <del>banks</del> <b>BANK</b> within a reasonable time. BATA thereafter, <b>and subject to the limitations of Article 9</b>, shall have:</p>	BATA agrees to replace “banks” with “BANK”. BATA does not agree to any additional changes in this Article.
RFP, Attachment D – Professional Services Agreement, Page 30, Article 24, Dispute Resolution, subarticle C	<p>Please revise Article 24, Dispute Resolution, subarticle C to reflect the text below:</p> <p>C. <u>Other Remedies.</u> If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. <b>If and to the extent required under California Government Code 910 et seq and not otherwise pre-empted by federal law,</b></p>	BATA does not agree to this change.

	BANK must file a government claim <b>pursuant to such provisions of the Government Code</b> in order to initiate a civil action.	
RFP, Attachment D – Professional Services Agreement, Page 30, Article 24, Dispute Resolution, subarticle F	<p>Please revise Article 24, Dispute Resolution, subarticle F to reflect the text below:</p> <p>F. <u>Survival of this Article.</u> This Article shall survive completion or terminations of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California, <b>or, to the extent applicable, the laws of the United States of America.</b></p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 31, Article 25, Choice of Law	<p>Please revise Article 25, Choice of Law to reflect the text below:</p> <p>All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State, <b><u>except to the extent pre-empted by federal law, in which case the latter shall apply.</u></b></p>	BATA does not agree to this change.
RFP, Attachment D – Professional Services Agreement, Page 31, Article 30, Entire Agreement, Modification	<p>Please revise Article 30, Entire Agreement Modification to reflect the text below:</p> <p>This Agreement for Services, including any attachments <b><u>and, to the extent not inconsistent with the foregoing, the BANK's Account terms.</u></b> constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. BANK represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the BANK and BATA. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.</p>	BATA does not agree to this change.